

# EXHIBIT H

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**EXHIBIT**

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MONROE COUNTY GRAND JURY

-----X

THE PEOPLE OF THE STATE OF NEW YORK

- vs -

DAVID VANN

-----X

CHARGES: ASSAULT IN THE SECOND DEGREE

PRESENTED: APRIL 4th, 8th & 19th, 2016  
BY: MICHAEL HARRIGAN  
ASSISTANT DISTRICT ATTORNEY

REPORTED BY: CHAD L. SMITH  
MARY JO MOONAN  
DIANA M. SMITH

COUNTY00458

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RE: D. VANN

INTRODUCTION & LAW

1 Proceedings held before the Monroe County Grand Jury  
2 on the 4th day of April, 2016  
3 by Michael Harrigan, Assistant District Attorney.  
4 Reported by: Chad L. Smith

5 \* \* \*

6 MR. HARRIGAN: Hello, everybody.

7 My name Michael Harrigan, last  
8 name is spelled H-a-r-r-i-g-a-n. And today  
9 I'm presenting the case of the People of the  
10 State of New York versus David, D-a-v-i-d,  
11 middle name Christopher,  
12 C-h-r-i-s-t-o-p-h-e-r, and last name is Vann,  
13 V-a-n-n.

14 May I have the clerk's book  
15 number please?

16 THE CLERK: Twenty-nine.

17 MR. HARRIGAN: Thank you.

18 Number of jurors present?

19 THE CLERK: Twenty-two.

20 MR. HARRIGAN: Thank you.

21 Okay. At least initially today  
22 you're going to hear from one officer. You  
23 may hear from other officers. I'll list all

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RE: D. VANN

INTRODUCTION & LAW

1 three officers at this time, they're all from  
2 the Rochester Police Department, they're names  
3 are Officer Matthew Drake, Officer Jeffrey  
4 Kester and Officer Steven Mitchell.

5 Just by me saying the names of  
6 those witnesses and the defendant, does anyone  
7 think that they know or have any familiarity  
8 with any of these individuals?

9 Seeing no hands raised.

10 I'm going to be asking you to  
11 consider two counts of assault in the second  
12 degree, they're both under the same  
13 subdivision. One is going to be referring to  
14 Officer Drake and one is going to be referring  
15 to Officer Kester. The Penal Law Section for  
16 both is 120.05(3), I will read that to you at  
17 this time:

18 A person is guilty of assault in  
19 the second degree when with intent to prevent  
20 a police officer from performing a lawful  
21 duty, he or she causes physical injury to such  
22 police officer.

23 Now there are some definitions

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RE: D. VANN

INTRODUCTION & LAW

1 that I will give to you.

2 Intentionally: A person acts  
3 intentionally with respect to result or to  
4 conduct described by a statute defining an  
5 offense when his conscious objective is to  
6 cause such result or engage in such conduct.

7 Knowingly: A person acts  
8 knowingly with respect to conduct to a  
9 circumstance described by a statute defining  
10 an offense when he is aware that his conduct  
11 is of such nature or such circumstance exists.

12 As your legal adviser I'll advise  
13 you that this section of assault in the second  
14 degree does not require intent to cause the  
15 injury. It's the intent is to prevent a  
16 police officer from performing a lawful duty.

17 Physical injury, that means  
18 impairment of physical condition or  
19 substantial pain.

20 Okay. Does anyone have any  
21 initial questions with regards to the law?

22 Okay. Seeing no questions I'll go ahead and  
23 call in the first witness.

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Re: D. VANN

S. MITCHELL

1                   S T E V E N M I T C H E L L,  
2       called herein as a witness, first being duly sworn,  
3                   testified as follows:

4       EXAMINATION BY MR. HARRIGAN:

5       Q       Sir, can you please state your name and spell your  
6               name for the record?

7       A       Steven Mitchell, S-t-e-v-e-n, M-i-t-c-h-e-l-l.

8       Q       And where do you work?

9       A       For the Rochester Police Department.

10      Q       And in what capacity?

11      A       As a police officer.

12      Q       Generally what are some of your duties as a police  
13              officer with the Rochester Police Department?

14      A       We respond to 911 phone calls, as well as proactive  
15              police work such as traffic stops, street stops and  
16              I also like do certain details for high-violent  
17              areas.

18      Q       Let me ask you this, approximately how long have  
19              you worked in law enforcement?

20      A       Over nine years.

21      Q       Now I'm going direct your attention to  
22              September 4<sup>th</sup> of 2015, at approximately 11:28  
23              p.m.

COUNTY 00463

7

Re: D. VANN

S. MITCHELL

- 1 Did you respond to an address at 439 South  
2 Avenue in the City of Rochester, County of Monroe,  
3 state of New York?
- 4 A Yes, I did.
- 5 Q And why did you respond to that location?
- 6 A It was for customer trouble for a male refusing to  
7 leave the inside of that location.
- 8 Q And what was that location?
- 9 A It's a corner store, a mini-mart.
- 10 Q Okay. And did you respond with any other officers?
- 11 A Yes, I did.
- 12 Q And was anybody else in your car or did they  
13 respond separately?
- 14 A They responded separately.
- 15 Q And who were those other officers?
- 16 A Officer Drake and Officer Kester.
- 17 Q Were you all in marked patrol vehicles?
- 18 A Yes, we were.
- 19 Q And were you all in department issued uniforms?
- 20 A Yes, we were.
- 21 Q When you arrived at that location what are some of  
22 your initial observations?
- 23 A The male, the defendant, was still inside of the



COUNTY00464

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Re: D. VANN

S. MITCHELL

1 location. We spoke with -- the owner of the store  
2 stated that the male had been removed at one point  
3 and was told not to come back and did come back.  
4 The male was inside the store and we spoke with him  
5 about leaving that location, said he was not  
6 welcome anymore.

7 Q Did the owner of the store ask you to remove that  
8 individual?

9 A Yes, he did.

10 MR. HARRIGAN: Now the witness has testified  
11 about some of the things that other people may  
12 have said to him. They're not offered for the  
13 truth of the matter asserted. They're merely  
14 offered to show why the officers or the  
15 witnesses acted in the manner that they did.

16 BY MR. HARRIGAN:

17 Q So let me ask you, did you eventually get a name  
18 for the individual that you were dealing with that  
19 you were asking to leave the store?

20 A Yes, sometime later.

21 Q Do you recall what his name was?

22 A It was David Vann.

23 Q And what are some of the things that you said to

59400465 COUNTY

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Re: D. VANN

S. MITCHELL

1           this individual to try and have him leave the  
2           store?

3       A       I explained to him that it was a private business  
4           and he was no longer welcome in the store. I even  
5           put it to the point of if you have a private party  
6           at your house and someone asks you to leave it's  
7           the same thing, the owner of the house can ask you  
8           to leave. I told him it was a private  
9           establishment, the owner had the right to ask him  
10          to leave and he was to leave.

11       Q       And what, if anything, did he say in response?

12       A       Initially he was very argumentative, said that it  
13           was a free country, he did not have to leave the  
14           store. He was very upset about not being able to  
15           buy beer. And after several minutes of going back  
16           and forth with the individual he finally started to  
17           walk out the door.

18       Q       And you said he started.

19                   Did he walk all the way out of the door?

20       A       He did and then turned back around.

21       Q       And when he turned back around what did he do, if  
22           anything?

23       A       He was beginning to walk back towards the store,

99400466 COUNTY

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Re: D. VANN

S. MITCHELL

1 and balled - he actually balled his fists up as he  
2 turned towards the officers. And he yelled out  
3 something, I can't remember exactly what it is was.

4 Q And what, if anything, did you or other officers do  
5 at that point?

6 A At that point we were putting him into handcuffs  
7 and placing him under arrest, which we started to  
8 do at that point.

9 Q Did you get him all the way in handcuffs?

10 A No, we did not.

11 Q What did you do?

12 A We told him he was under arrest. We put one cuff  
13 onto his left hand. And his right hand he pulls  
14 from behind him and pulls forward to the front of  
15 his body, which was a sign of not wanting to be  
16 handcuffed, resisting.

17 Q So you said there were three officers?

18 A Yes.

19 Q Were you three still the only ones there?

20 A Yes, sir.

21 Q And were you all engaging with the defendant, Mr.  
22 Vann?

23 A Two of us were.

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11

Re: D. VANN

S. MITCHELL

1 Q Who were the two?

2 A Myself and Officer Kester.

3 Q So once the individual -- you said he brought his  
4 hands forward.

5 What if anything happened at that point?

6 A I still was holding on to his left arm and the  
7 individual at that point was being brought to the  
8 ground. At that point he fell to the ground and  
9 landed on Officer Kester.

10 Q When he landed on Officer Kester what, if anything,  
11 did you hear or see?

12 A Officer Kester immediately yelled and screamed out  
13 that he was in pain and kept screaming, My leg my  
14 leg, which the defendant had landed on.

15 Q And what, if anything, did you do at that point  
16 then?

17 A I tried to the pull the defendant away from Officer  
18 Kester to try to give him some room, he was in  
19 extreme pain. The cuffs were finished being  
20 applied to the defendant. I was going to start a  
21 search, but Officer Kester was asking to be removed  
22 from the area because Officer Kester at that point  
23 had really been immobilized and was laying on his

89400468

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Re: D. VANN

S. MITCHELL

1 back on the sidewalk.

2 Q Now you said that Officer Kester was in pain.

3 MR. HARRIGAN: I'm going to ask the grand jury  
4 to disregard that statement.

5 BY MR. HARRIGAN:

6 Q But just tell me what did you hear or see with  
7 regards to Officer Kester at that point?

8 A He was laying flat on his back and he kept  
9 screaming out- he was yelling out, My leg, my leg,  
10 multiple times.

11 Q Now were you able to -- you still only had the  
12 individual in one handcuff?

13 A He was cuffed at that point in time, but was not  
14 searched.

15 Q So you cuffed him with both hands?

16 A Did I put him in both hands?

17 Q Yes.

18 A Yes, I did.

19 Q And what did you do at that point then?

20 A I was going to start a search. I wasn't able to.  
21 So we stood him up and brought him over to the  
22 patrol car because he had been reaching for part of  
23 his waistband.

69400469 COUNTY

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Re: D. VANN

S. MITCHELL

1 Q And were you able to do that, complete that search?

2 A I was not.

3 Q What happened.

4 A When I brought him to the patrol vehicle he bumped  
5 his chest off the patrol vehicle, I lost control of  
6 his body even though he was handcuffed. And he  
7 stood right in front of me and kind of came at me.

8 Q And were you dealing with him alone at this point  
9 or with any other officers?

10 A I was by myself. Officer Drake saw the struggle  
11 and saw the defendant pull away from me, and  
12 Officer Drake came in to assist.

13 Q And then what happened?

14 A S -- or I apologize, excuse me for poor language.  
15 The defendant was told to get on the ground,  
16 refused, and we brought S to the ground.

17 Q You said S --

18 A I said S the entire --

19 Q Is that Mr. Vann?

20 A The defendant, yes. I apologize.

21 Q And as you were bringing Mr. Vann to the ground did  
22 you make any other observations with regards to  
23 Officer Drake?

COUNTY00470

14

Re: D. VANN

S. MITCHELL

1 A Yes. When we went to the ground, Officer Drake  
2 yelled out, I'm out, and pulled away from the  
3 defendant.

4 Q Okay. And then what are some of the things that  
5 happened?

6 A Officer Drake was moving away and he wasn't moving  
7 one of his arms, so I knew he was injured or had  
8 some sort of an injury. I had the defendant on the  
9 ground, still had not searched him, and the  
10 defendant at least once, if not twice, reached for  
11 the same spot that I'd seen him reach for before  
12 which was his back-rear waistband area.

13 Q Were his hands handcuffed behind his back?

14 A His hands were handcuffed, yes.

15 Q So then when you see him reaching for his  
16 waistband, what, if anything, do you do at that  
17 point?

18 A I continue to hold him on the ground. At one point  
19 I pepper spray him, he refused to stop reaching for  
20 that part of his waistband. I hold him on the  
21 ground until additional resources, additional  
22 officers, get to the scene.

23 Q So once additional officers get to the scene are

17400471 COUNTY

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Re: D. VANN

S. MITCHELL

1           you able to take control of Mr. Vann?

2       A       We were, yes.

3       Q       And did you place him in a patrol car at this time?

4       A       Yes, we did.

5       Q       And did that end, for all intents and purposes, the  
6               incident there?

7       A       Yes.

8       MR. HARRIGAN:     All right. I don't have any

9               further questions for this witness.

10                         Any questions from the grand  
11               jury?

12                         Yes, ma'am?

13       A GRAN JUROR:     When you were saying that you  
14               guys were trying to put the handcuffs on the  
15               defendant, you guys fell on Officer Kester's  
16               leg?

17       THE WITNESS:     The defendant fell on Officer  
18               Kester's leg.

19       A GRAN JUROR:     As you guys were putting  
20               handcuffs on him --

21       THE WITNESS:     Yes.

22       A GRAN JUROR:     -- the defendant fell on Officer  
23               Kester's leg?



COUNTY 00472

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Re: D. VANN

S. MITCHELL

1 THE WITNESS: Yes, he did.  
2 MR. HARRIGAN: Any other questions?  
3 Okay. Seeing no other questions,  
4 you are free to go.  
5 Thank you, sir.

6 (WITNESS EXCUSED.)

7 \* \* \* \* \*

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Re: D. VANN

S. MITCHELL

1 MR. HARRIGAN: Okay. At this point I don't have  
2 any further evidence or any witnesses to  
3 present to you. I'm going to be back on a  
4 different date or time. I'm going to ask you  
5 not to talk about the case or discuss the case  
6 with each other. I'm not leaving anything  
7 with you. And I will be back.

8 Thank you, everybody.

9  
10 (CASE ADJOURNED.)

11 \* \* \* \* \*

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RE: D. VANN

INTRODUCTION

Testimony presented before the Monroe County Grand Jury on the 8th day of April, 2016, by Michael Harrigan, Assistant District Attorney.

Reported by: Mary Jo Moonan

\* \* \*

MR. HARRIGAN: Hello, everybody. My name is Michael Harrigan, and I'm continuing the case of clerk's book number 29, People of the State of New York versus David Vann.

May I ask how many jurors are present?

THE CLERK: Twenty-two.

MR. HARRIGAN: These are the same twenty-two jurors that were present during the prior presentation of the case?

THE FOREPERSON: Yes.

MR. HARRIGAN: I think I've already mentioned their names. I'm going to do it again.

Officer Matthew Drake. Officer Jeffrey Kester of the Rochester Police Department.

I'll ask again if anybody knows those individuals?

COUNTY00475

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RE: D. VANN

INTRODUCTION

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I don't see any hands raised.  
Any other questions at this  
point?

I don't see any questions. I'm  
going to go ahead and continue with the case  
at this point.

Thank you.

\* \* \*

RE: D. VANN

M. DRAKE

1 M A T T H E W D R A K E,  
2 called herein as a witness, first being duly sworn,  
3 testified as follows:

4 EXAMINATION BY MR. HARRIGAN:

5 Q. Sir, can you please state your name and spell your  
6 name for the record?

7 A. Officer Matthew Drake, D-r-a-k-e.

8 Q. And you said you're an officer. With what agency?

9 A. I work for the City of Rochester Police Department.  
10 I'm assigned to Center Division, fourth platoon.

11 Q. Approximately how long have you worked in law  
12 enforcement?

13 A. Almost ten years.

14 Q. And now I'm going to direct your attention to  
15 September 4th, 2015 at approximately eleven twenty  
16 p.m.

17 Were you working at that time?

18 A. I was.

19 Q. And were you in uniform?

20 A. Yes, I was.

21 Q. And in a marked patrol vehicle?

22 A. Correct.

23 Q. Around that date and time did you arrive at a

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RE: D. VANN

M. DRAKE

1 location at 439 South Avenue in the city of  
2 Rochester, county of Monroe, state of New York?

3 A. I did.

4 Q. Why did you go to that location?

5 A. I received a call from the store owner for a male  
6 trespassing the location.

7 Q. And was there any other officers on scene when you  
8 arrived?

9 A. There were not.

10 Q. Were there any other officers in your vehicle with  
11 you?

12 A. No, there were not.

13 Q. When you got to the scene what are some of the  
14 things you observed or some of the things you did.

15 A. When I got to the location, I had a brief  
16 conversation with the store owner. I observed one  
17 other male inside the location. While speaking to  
18 the store owner, he stated the other male in the  
19 location had been in and out of the store all day  
20 and he hadn't purchased anything. He was acting  
21 kind of suspicious, out of the ordinary, and the  
22 store owner had asked me to make the male leave the  
23 location.

RE: D. VANN

M. DRAKE

1 MR. HARRIGAN: Now, an officer testified about  
2 some things another person told him. You're  
3 not to consider that for the truth of the  
4 matter asserted. You're only to consider that  
5 for why the witness did what he did based on  
6 that conversation.

7 BY MR. HARRIGAN:

8 Q. So after you had this conversation with this store  
9 owner, what if anything did you do?

10 A. At that point I had a brief conversation with the  
11 male inside the store. I asked him what his  
12 business was inside the location. I didn't really  
13 get a response from him.

14 I attempted to interact with that subject for  
15 approximately a minute or two. I got no actual  
16 responses from the individual to which point I  
17 asked him to leave the location.

18 Q. And that individual, did you come to end up knowing  
19 that individual's name?

20 A. I did.

21 Q. What was his name?

22 A. David Vann.

23 Q. Did the individual leave the location?

COUNTY00478

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RE: D. VANN

M. DRAKE

1 A. He did. Eventually he stepped outside the store,  
2 yes.

3 Q. And what happened once he stepped out -- well, let  
4 me ask you this: Once he stepped out of the store,  
5 by that time had other officers arrived?

6 A. That's correct.

7 Q. What other police officers?

8 A. Officer Mitchell and Officer Kester.

9 Q. What if anything happened when Mr. Vann exited the  
10 front of that store there?

11 A. So as Mr. Vann exited the store, he came into  
12 contact with Officer Mitchell who took over the  
13 primary on this investigation. I moved to a cover  
14 position.

15 Q. When you say, a cover position, what does that  
16 mean?

17 A. When we interact with someone, we will have somebody  
18 with primary interaction. With the cover, I take a  
19 couple steps back. I kind of observe the entire  
20 situation.

21 Q. Once Officer Mitchell began his contact with  
22 Mr. Vann, what were so some of your observations  
23 you made from that point?



RE: D. VANN

M. DRAKE

1 A. From this point, everything happened pretty quickly.  
2 As soon as Mr. Vann exited the store, he had a very  
3 brief conversation with Officer Mitchell at which  
4 point he actually turned his back to me. He mumbled  
5 something to which point Officer Mitchell moved into  
6 to effect an arrest.

7 Q. Was he able to make the arrest at that point?

8 A. I believe he got one handcuff on.

9 Q. Then what happened?

10 A. At which point Mr. Vann kind of pulled away from the  
11 officer.

12 Officer Kester also went in to assist with  
13 the arrest, and I moved in from the cover position.

14 Q. Were you able to take Mr. Vann into custody at that  
15 point?

16 A. Mr. Vann struggled for a brief period of time at  
17 which point he was -- as we were struggling with  
18 him, he kind of fell to the ground.

19 Q. And what if anything did you do at that point then?

20 A. At which point we all fell to the ground.

21 Immediately upon, Officer Kester stated he had broke  
22 his leg.

23 Q. Based on that, what if anything did you do once

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COUNTY00481

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RE: D. VANN

M. DRAKE

1           Officer Kester said he broke his leg? Did you do  
2           anything in response to that?

3           A.     Yeah. So at this point Mr. Vann was in both  
4           handcuffs. He had been arrested at that point by  
5           Officer Mitchell. I stayed with Officer Kester, and  
6           Officer Mitchell escorted the subject back to the  
7           police vehicle.

8           MR. HARRIGAN:     Again, the witness testified as  
9                               to what somebody else did. It's not offered  
10                             for the truth of the matter asserted, merely  
11                             to only say what he did following that.

12           BY MR. HARRIGAN:

13           Q.     At some point did you leave -- why were you staying  
14           with Officer Kester?

15           A.     So at this point, Officer Kester is laying on the  
16           ground. He stated he's broken his leg. We started  
17           to attract crowds from across the street, so I  
18           stayed to provide security with him until the  
19           ambulance showed up.

20           Q.     And at some point did you leave where Officer  
21           Kester was?

22           A.     I did.

23           Q.     Why did you do that?

RE: D. VANN

M. DRAKE

1 A. So as I was standing with Officer Kester, the  
2 crowd's attention was kind of distracted off to what  
3 would be my left. As I looked over there, I  
4 observed Officer Mitchell was again fighting with  
5 the subject.

6 Q. Was that individual, was that Mr. Vann we're  
7 talking about?

8 A. Yes.

9 Q. What did you do then?

10 A. At which point I left Officer Kester. I went over  
11 to assist Officer Mitchell to get the subject back  
12 in control.

13 Q. What are some of the things that happened when you  
14 got in contact with Mr. Vann and Officer Mitchell?

15 A. At this point, Mr. Vann's actively resisting arrest.  
16 The two of us attempted to take him to the ground to  
17 get him back into custody. As soon as we get to the  
18 ground, I felt a searing pain in my right shoulder.  
19 I go to push off the ground because Officer Mitchell  
20 and the subject rolled away from me, I go to push  
21 off the ground to get back into the situation at  
22 which point I realize my right arm is completely  
23 useless.

COUNTY00482

RE: D. VANN

M. DRAKE

1 Q. Were you in any pain at that point?

2 A. I was, yes.

3 Q. Can you describe the pain for the grand jury?

4 A. Kind of a lot, searing pain.

5 Q. What if anything did you do at that point then?

6 A. So at which point I got on the radio. I called out  
7 that we needed additional cars, we had two officers  
8 injured and the third officer was still in a  
9 physical confrontation with the subject.

10 Q. Eventually did other cars, other officers arrive?

11 A. That's correct.

12 Q. Now, did you go to any hospital or get any care  
13 regarding your shoulder?

14 A. Yeah, I was transported to Rochester General  
15 Hospital via ambulance.

16 Q. And what's some of the care that you received at  
17 Rochester General Hospital?

18 A. So upon arriving at Rochester General, they gave me  
19 some kind of a pain medication which was able to  
20 kind of get the shoulder pain under control. I  
21 received x-rays there at which point they did  
22 confirm I dislocated my shoulder. I was in and out  
23 of care at the hospital for about two hours. At one

COUNTY00484

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RE: D. VANN

M. DRAKE

1 point they came in and they knocked me completely  
2 out at which time they had to reset my shoulder. I  
3 was put in a sling for approximately two weeks.

4 Q. Did you receive any -- other than having a sling,  
5 did you go to any other further doctor appointments  
6 or physical therapy?

7 A. I did, yes. I had a couple different appointments.  
8 I had MRIs. I had to speak to a shoulder surgeon  
9 and about a month of follow-up doctor appointments  
10 and six weeks of physical therapy.

11 Q. Were you out of work for any period of time?

12 A. Yes, I missed a little over a month of work.

13 Q. At the worst, zero being the least and ten being  
14 the most, what was the most pain, I guess, you  
15 received or you felt -- excuse me?

16 A. From the scene up to the time I received the  
17 medication at the hospital, pain varied, anywhere  
18 from eight to a ten.

19 MR. HARRIGAN: I don't have any further  
20 questions for this witness.

21 Any questions from the grand  
22 jurors?

23 A GRAND JUROR: What was the defendant placed

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RE: D. VANN

M. DRAKE

1 under arrest for?

2 THE WITNESS: The original charge would have  
3 been trespassing.

4 A GRAND JUROR: Okay.

5 MR. HARRIGAN: Any other questions?

6 A GRAND JUROR: You said you're the first one on  
7 the scene. Okay. If you're the first one on  
8 the scene, you're talking to the store owner,  
9 then you're speaking to the defendant to see  
10 what's going on with Mr. Vann.

11 Then you said there's another  
12 officer who arrived after the fact, and you  
13 stepped back. If you get there first, is it  
14 proper protocol for you to step back and  
15 another officer take over that because you  
16 were the first one to arrive on the scene?

17 THE WITNESS: Yeah, pretty routinely we'll  
18 rotate throughout of contact and cover roles.

19 A GRAND JUROR: Okay. You also said that during  
20 the struggle, when you guys fell to the  
21 ground, you had eventually managed to get the  
22 handcuffs on. That somebody got the handcuffs  
23 on. Then you're saying you got the handcuffs

RE: D. VANN

M. DRAKE

1 on, somewhere along the line your arm got  
2 dislocated or whatever. That was before or  
3 after?

4 THE WITNESS: Two separate incidents.

5 A GRAND JUROR: When the handcuffs was on him or  
6 before when your arm got injured in this  
7 tussle?

8 THE WITNESS: I don't understand the question.

9 A GRAND JUROR: At what time did you hurt your  
10 arm, during the first struggle before you got  
11 those handcuffs on him or while he was on the  
12 floor and you were trying to raise him up off  
13 the floor to remove him from the area?

14 THE WITNESS: There's two separate fights.  
15 During the first fight, he was originally put  
16 in handcuffs and my shoulder was not injured  
17 in that, and Officer Mitchell escorted the  
18 subject to the police vehicle. I stayed with  
19 Officer Kester because he had broken his leg.

20 As Officer Mitchell is taking the  
21 suspect to the vehicle, somehow there's  
22 another altercation and the subject is not  
23 wearing two handcuffs, so I go back there to

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RE: D. VANN

M. DRAKE

1 effect that arrest. Again, we have to  
2 re-handcuff the defendant. During that second  
3 arrest is when I dislocated my shoulder.

4 A GRAND JUROR: Okay.

5 MR. HARRIGAN: Any other questions?

6 A GRAND JUROR: Was Mr. Vann handcuffed in the  
7 store or outside the store?

8 THE WITNESS: Outside on the sidewalk.

9 MR. HARRIGAN: Any other questions?

10 Okay. Seeing no other questions,  
11 you're free to go. Thank you, sir.

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13 (WITNESS EXCUSED)

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RE: D. VANN

J. KESTER

1 J E F F R E Y K E S T E R ,  
2 called herein as a witness, first being duly sworn,  
3 testified as follows:

4 EXAMINATION BY MR. HARRIGAN:

5 Q. Sir, can you please state your name and spell your  
6 name for the record?

7 A. Jeffrey Kester, K-e-s-t-e-r.

8 Q. Where do you work, sir?

9 A. The Rochester Police Department.

10 Q. And in what capacity?

11 A. Police officer.

12 Q. And generally what are some of your duties as  
13 police officer?

14 A. I respond to calls for service, 911 calls to  
15 dispatch.

16 Q. And approximately how long have you worked in law  
17 enforcement?

18 A. Six years.

19 Q. I'm going to direct your attention to September  
20 4th, 2015 at approximately eleven twenty p.m. or a  
21 little bit thereafter or around that time.

22 Did you respond to 439 South Avenue in the  
23 city of Rochester, county of Monroe, state of New

68400489 COUNTY

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RE: D. VANN

J. KESTER

1 York?

2 A. Yes, I did.

3 Q. Why did you respond to that location?

4 A. I heard over the radio that two other officers had  
5 been dispatched for a customer trouble, and I drove  
6 by because I was in the area.

7 Q. And did you stop at that location then?

8 A. Yes, I did.

9 Q. And were you in uniform?

10 A. Yes, I was.

11 Q. And were you operating a marked patrol car?

12 A. Yes, I was.

13 Q. And were the other two officers that you mentioned,  
14 were they there on the scene when you arrived?

15 A. That's correct, they were on scene.

16 Q. Who were those officers?

17 A. It was Officer Mitchell and Officer Drake.

18 Q. So once you got on scene, what are some of the  
19 things you observed or some of the things you did  
20 initially?

21 A. I observed both those officers speaking to a male  
22 that was standing in the doorway of the address that  
23 I had been dispatched to.

RE: D. VANN

J. KESTER

1 Q. At some point did -- was that individual -- did  
2 either of those officers try to approach that  
3 individual to effectuate an arrest?

4 A. Yes. I observed Officer Mitchell approach the  
5 person standing in the doorway and attempt to put  
6 him under arrest.

7 Q. And what did Officer -- what was Officer Mitchell  
8 doing and what did you do to assist if anything?

9 A. From where I was standing, I observed him approach  
10 the suspect, take out his handcuffs and handcuff the  
11 individual's left hand, and then I observed him go  
12 to handcuff the individual's right hand.

13 As I observed him do this, I saw this  
14 individual pull away. At that point, I stepped in  
15 to assist.

16 Q. And to assist, what did you do? What are some of  
17 the things you did?

18 A. My intention was to hold the individual's right arm  
19 and make it easier for Officer Mitchell to complete  
20 the arrest by handcuffing him.

21 Q. Did that happen?

22 A. Eventually, yes.

23 Q. You were able to hold his arm to have Officer

COUNTY00490

16400491

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RE: D. VANN

J. KESTER

1 Mitchell cuff the right arm?

2 A. I was able to grab the individual's arm, and as I  
3 did so, a struggle ensued as he tried to pull away  
4 from the arm that I grabbed.

5 Q. Okay. And so this individual -- did you come to  
6 find out what this individual's name was?

7 A. Yes, after the arrest.

8 Q. What was his name?

9 A. David Vann.

10 Q. So you said this individual tried to take his arm  
11 away, and there was a struggle with you?

12 A. Correct.

13 Q. And what if anything happened as a result of that?

14 A. During the struggle, we ended up on the ground. As  
15 we went to the ground, the result was me breaking my  
16 right leg.

17 Q. When you went to the ground, did you feel any pain  
18 in your leg?

19 A. Yes, immediately.

20 Q. Describe the pain for us.

21 A. It was intense pain in my right leg around the ankle  
22 area.

23 Q. And were you able to get back up?

RE: D. VANN

J. KESTER

1 A. No. I didn't know at the time, but the ligament  
2 that connects the two bones was completely torn  
3 during that incident.

4 Q. So tell us some of the things you did at that point  
5 once you fell to the ground and you felt this pain.

6 A. As we did hit the ground, I did audibly hear the  
7 sound of the second handcuff going on, so I knew the  
8 individual was handcuffed.

9 Once Officer Mitchell stood up and asked for  
10 my assistance in raising the suspect up, I informed  
11 him that I couldn't get up because I had believed I  
12 had just broken my leg.

13 Q. Then what happened if anything? What did you do?

14 A. I basically pulled myself over to the corner of the  
15 brick that was on the side of the convenience store  
16 and made a radio transmission -- or attempted to  
17 make radio transmission.

18 Q. Eventually were you taken to the hospital?

19 A. Yes. I was transported to Highland Hospital.

20 Q. And what's some of the treatment that you received  
21 at Highland Hospital?

22 A. I received morphine in the ambulance for the pain so  
23 they could take my boots off.

COUNTY00493

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RE: D. VANN

J. KESTER

1                   Upon arriving at the hospital, I received  
2                   x-rays and I believe I received intervenous fluids,  
3                   and eventually I was discharged with a referral to  
4                   an orthopedic surgeon and with a prescription for  
5                   additional pain medication.

6           Q.       And did you have any follow-up procedures or  
7                   appointments?

8           A.       I received surgery at the end of that month of  
9                   September.

10          Q.       Okay. And do you know -- what are some of the  
11                   things that you have as a result of that surgery?

12          A.       As far as I recall, I'm not sure of the exact  
13                   number, I believe I have four screws. I have one  
14                   rod and one plate, all titanium.  
15                   They're -- basically they anchor the bone to my  
16                   ankle so I can stand and I can walk without --  
17                   hopefully without a limp eventually, and that's like  
18                   permanent hardware.

19          Q.       Have you been out of work at all as a result of  
20                   this?

21          A.       I have yet to return as of now. I'm expected to  
22                   return to a light duty status by the end of this  
23                   month.

COUNTY 00494

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RE: D. VANN

J. KESTER

1 Q. Now, can you describe the level of pain at its  
2 worst, zero being the least and ten being the most?

3 A. I would say it was a ten out of ten, and -- during  
4 the incident, and then just post surgery, just  
5 because of the nature of the injury, that was also,  
6 I would say, a ten out of ten at its worst.

7 Q. Thank you, sir.

8 MR. HARRIGAN: I have no further questions for  
9 this witness.

10 Any questions from the grand  
11 jury?

12 A GRAND JUROR: With respect to your injury, did  
13 you have any other injury with that leg  
14 before -- prior to or had it been weak, would  
15 it have given out?

16 THE WITNESS: I've never broken a bone, and  
17 I've never sustained an injury on duty in my  
18 six years.

19 A GRAND JUROR: What's the police -- I don't know  
20 if you can answer this. What's the protocol?  
21 Does the person get like a verbal warning that  
22 he's being arrested that he's supposed to --  
23 or just to put the cuffs on, like he might

RE: D. VANN

J. KESTER

1                   jerk, what are you doing? Somebody grabs me  
2                   and they don't tell me what they're doing --

3           MR. HARRIGAN:       I ask that -- just I guess -- if  
4                   there's any policies or regulations you can  
5                   testify to based on your training and  
6                   experience. I'd ask that if you don't, then  
7                   just speak with us on what was done during  
8                   this incident.

9           THE WITNESS:       I can tell you that that's some  
10                   specific verbiage that is used. In this  
11                   incident the directive was given to place his  
12                   hands behind his back. This is typically  
13                   what -- in my experience, I've heard used, and  
14                   I can say specifically just speaking of this  
15                   incident, that was the verbiage that was used.

16           A GRAND JUROR:     Okay.

17           MR. HARRIGAN:     Any other questions?

18                               Okay. Seeing no questions,  
19                   you're free to go. Thank you, sir.

20

21                               (WITNESS EXCUSED)

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GOINTY00495



RE: D. VANN

INSTRUCTION

1 MR. HARRIGAN: , Okay. At this point, I don't  
2 have any further testimony for you. I don't  
3 have any further evidence.

4 I'm going to ask you not to  
5 discuss the case amongst yourselves, and I'm  
6 not going to leave anything with you, and I  
7 will be back on a separate date and time.

8 Thank you, everybody.

9  
10 (CASE ADJOURNED)

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RE: D. VANN

EVIDENCE & INSTRUCTIONS

1 Proceedings held before the Monroe County Grand Jury  
2 on the 19th day of April, 2016, by Michael Harrigan,  
3 Assistant District Attorney.

4 Stenographer: Diana M. Smith

5 \* \* \*

6 MR. HARRIGAN: Hello, everybody. I am continuing  
7 Clerk's Book Number 29. Again, my name is  
8 Michael Harrigan, and this is the case of  
9 the People of the State of New York versus  
10 David Christopher Vann.

11 May I ask how many jurors are  
12 present?

13 THE FOREPERSON: Twenty-two.

14 MR. HARRIGAN: Thank you. And these are the same  
15 twenty-two jurors present during the prior  
16 presentations of the case?

17 THE FOREPERSON: Yes.

18 MR. HARRIGAN: Thank you.

19 Okay. At this time I'm going to  
20 ask you to vote two counts of assault in the  
21 second degree, one for Officer Drake, one  
22 for Officer Kester. They're both under  
23 Penal Law section 120.05 subdivision (3).

RE: D. VANN

## EVIDENCE &amp; INSTRUCTIONS

1 I'm going to leave two exhibits  
2 for your review. They're both medical  
3 records. The first are medical records for  
4 September 5th, 2015, for Matthew Drake, and  
5 this is from Rochester General Hospital. It  
6 does have a certification attached to it  
7 that indicates that these records are kept  
8 and prepared in the regular course of  
9 business, and that it was the regular course  
10 of business to make them at the time of the  
11 act, transaction, occurrence or event or  
12 within a reasonable time thereafter. It is  
13 signed by the Manager Operations Kathleen,  
14 K-a-t-h-l-e-e-n, Barry, B-a-r-r-y.

15 It is your review of this  
16 document that is controlling. I'll just  
17 mention a couple of things. It talks about  
18 a reduction -- a shoulder reduction that  
19 needed to be performed. It talks about  
20 level of pain is five out of ten when  
21 sitting and nine out of ten when standing.  
22 Described the pain as stabbing.

23 I'll also leave with you Grand

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RE: D. VANN

## EVIDENCE &amp; INSTRUCTIONS

1 Jury Exhibit Number 2. These are medical  
2 records for Jeffrey Kester. These are from  
3 Highland Hospital. Again, it's your review  
4 of these documents that are controlling.  
5 I'll just mention a couple of things for  
6 your convenience.

7 First off, there is a  
8 certification attached to these documents  
9 from Kristen, K-r-i-s-t-e-n, Dilg, D-i-l-g,  
10 who is a manager in the Health Information  
11 Management Department for Highland Hospital.  
12 And this indicates that she is an authorized  
13 custodian of these records, that they are  
14 accurate versions of the documents in  
15 possession, custody and control of Highland  
16 Hospital, and they were made in the regular  
17 course of business of the hospital, and it  
18 was in the regular course of business to  
19 make the entries at the time of the acts,  
20 transactions, conditions, occurrences or  
21 events, or within a reasonable time  
22 thereafter.

23 There are a number of things

RE: D. VANN

EVIDENCE & INSTRUCTIONS

that these records show, but I'll just bring  
to your attention that they show a distal  
fibula fracture and talks about ankle pain  
of ten out of ten and severe nausea from the  
patient.

I'll leave these two exhibits  
for your review and ask for your vote.

Before I leave and ask for your  
vote, are there any questions?

THE GRAND JURORS: (No response.)

MR. HARRIGAN: Seeing no questions, I ask for  
your vote at this time.

(CASE VOTED)

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